

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

FILED

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U.S. BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA

IN THE MATTER OF: ) Case No. 01-07221-B  
) Chapter 7  
) Asset Case  
Kepley Enterprises, Inc. )  
)  
Debtor. )  
\_\_\_\_\_ )

**NOTICE OF OPPORTUNITY FOR HEARING AND APPLICATION  
FOR SALE OF ASSETS FREE AND CLEAR OF LIENS**

TO: ALL CREDITORS AND PARTIES IN INTEREST:

YOU ARE HEREBY NOTIFIED on September 27, 2001, Ralph C. McCullough, II, as Trustee in the above-referenced bankruptcy filed this Application for Sale of Assets Free and Clear of Liens in which he proposes to sell the property herein described free and clear of all liens and encumbrances according to the terms and conditions stated below. A copy of the proposed Order Authorizing Sale of Assets Free and Clear of Liens accompanies this Notice and Application.

TAKE FURTHER NOTICE that any response, return and/or objection to the Application should be filed with the Clerk of the Bankruptcy Court and served on all parties in interest within **TEN (10) DAYS** from the date of this notice.

TAKE FURTHER NOTICE that no hearing will be held on this Application unless a response, return and/or objection is timely filed and served, in which case, the Court will conduct a hearing on **October 15, 2001 at 9:00 a.m.**, at the United States Bankruptcy Court, District of South Carolina, 1100 Laurel Street, Columbia, South Carolina. No further notice of this hearing will be given.

**THIS NOTICE OF SALE IS FOR THE SALE OF ASSETS HELD BY  
KEPLEY'S ENTERPRISES, INC., KEPLEY'S FINE FURNITURE,  
GALLERIA FURNITURE, PLAZA FURNITURE, INC.  
AND TRIAD FURNITURE DISCOUNTERS**

**THIS NOTICE DOES NOT INCLUDE ASSETS OF  
MYRTLE BEACH FURNITURE DESIGN, INC.**

PROPERTY TO BE SOLD: All assets including but not limited to furniture inventory, office equipment, other equipment, lamps, displays, rugs, paintings and other miscellaneous items of Kepley's Fine Furniture, Galleria Furniture, Triad Furniture Discounters, Plaza Furniture, Inc. which stores are located in Little River, Myrtle Beach and Mt. Pleasant, South Carolina (hereinafter the "Assets" or "Inventory"). The Trustee will not be selling items subject to true leases.

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TYPE OF SALE:

1. Assets located at Kepley's Fine Furniture, Little River : Proposed Three (3) to Four (4) week liquidation sale beginning October 22, 2001 to November 16, 2001 ending with a one day Public Auction without reserve being held for all remaining unsold Assets. If Inventory sells quickly, the number of weeks of liquidation sale may decrease and auction may occur sooner.
2. Assets located at Plaza Furniture, Mt. Pleasant : Three (3) to Four (4) week liquidation sale beginning October 22, 2001 to November 16, 2001 ending with a one day Public Auction without reserve being held for all remaining unsold Assets. If Inventory sells quickly, the number of weeks of liquidation sales may decrease and the auction may occur sooner.
3. Assets located at Kepley's Fine Furniture and Triad Furniture Discounters at Magnolia Mall, Myrtle Beach : The Trustee will hold a one day Public Auction without reserve either during the third or fourth weeks of the above-referenced liquidation sales, whichever proves better financially for the estate. Notice of this auction will be advertised..

**PROPERTY IS SOLD "AS IS, WHERE IS"**

PRICE: What a willing buyer will pay a willing seller.

APPRAISAL VALUE: approximately \$2.5 million

BUYER: Persons attending the liquidation sales and public auctions.

PLACE AND TIME OF SALE: See dates of sale as described in Type of Sale above.

SALES AGENT/AUCTIONEER/BROKER: Liquidation Sales will be conducted by High Point Furniture Liquidators, LLC ("HPFL or Liquidator") c/o Craven & Ruth, 1314 Long Street, Suite 108, High Point, North Carolina 27262. Sales Agent: Mark A. Craven (336) 882-5243. Any Auctions will be conducted by Odom Auction Company ("OAC or Auctioneer") c/o John M. Odom, S.C. Auction License # SCAL#627, P.O. Box 184, Manning, South Carolina, 29102.

COMPENSATION TO SALES AGENT/AUCTIONEER/BROKER, ETC.: HPFL and its supplied independent Sale Contractors ("Sales Contractors") will receive the following commission(s):

- i. Eight (8%) percent commission on Net Merchandise Receipts (gross receipts minus applicable sales taxes) from sales, generated from the Inventory liquidations.
- ii. Six (6%) percent commission on Net Merchandise Receipts (gross receipts minus applicable sales taxes) from sales generated from Inventory liquidations to Sales Contractors used at the liquidation sales. Each Sales Contractor will receive the six (6%) percent commission only on sales that the Sales Contractor makes.
- iii. Odom Auction Company (OAC), on auctions it conducts, will receive the following commission: Ten (10%) percent commission to OAC on gross proceeds of sale

generated from the Inventory auctioned. Neither HPFL nor its Sales Contractors will receive a commission on gross proceeds generated by OAC at auction. Only OAC will receive a 10% commission based on the gross auction proceeds.

**LIQUIDATOR'S AND AUCTIONEER'S EXPENSES OF SALE:** HPFL will incur the following expenses<sup>1</sup> at sale:

Advertising costs (to be shared between HPFL and OAC), Site Manager fees, lodging for Site Managers, labor costs (wages and taxes) for warehouse work, setup, tear down, and cleanup costs, waste removal costs, freight costs, and miscellaneous costs for supplies and additional services. The costs are estimated at \$216,900.00.

OAC will incur auction expenses to include costs of labor and clerical help. Such OAC expenses cannot be determined at this time due to not knowing the extent of the merchandise which will be auctioned.

**TRUSTEE'S EXPENSES OF SALE:** The Trustee's expenses of sale will include, but not be limited to rent from conversion date to vacation date of premises at Little River, Mt. Pleasant and Myrtle Beach locations (collectively the "Locations") based on terms of leases, utilities at the Locations from conversion date to date of cut off of utilities, all insurance needed by Trustee for operations and sales, payroll, payroll taxes and associated benefits to the Trustee's employees and appointed professionals from conversion to completion of the sale or work by Trustee, costs of waste removal, liquidation sale bank card fees of approximately 1.5% of charges, freight for moving inventory, sales tax, if applicable, any and all applicable real and personal property taxes associated with inventory, equipment and leases and costs incurred by the Trustee for mailing all Notices to creditors or other interested parties.

**ESTIMATED TRUSTEE'S COMPENSATION ON SALE:** approximately \$85,000.00 based on the approximate value of the Assets. In any case, the Trustee's compensation will not exceed the limits set forth in 11 U.S.C. §326(a).

**LIENS/MORTGAGES/SECURITY INTERESTS ENCUMBERING PROPERTY:**

The Trustee is informed and believes that Summit Business Capital, Inc. and Centura Bank (the "Secured Creditors") hold perfected security interests in the Assets. Upon information and belief, the Liens held against the Assets are as follows: (1) Summit holds a first lien on the Assets and (2) Centura Bank holds a second lien on the Assets. BB&T claims a security interest on computer equipment.

The Trustee has reached an agreement allowing for the sale of the Assets subject to the terms and conditions set forth herein. The Trustee proposes to pay the Secured Creditors, based on their liens and priority, the net proceeds of sale from their respective collateral after deducting the costs, commissions and expenses listed in a-j below.

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<sup>1</sup>Trustee will Notice shortly another sale to be held in Columbia, South Carolina. Trustee's agreement with HPFL includes cumulative expenses for both sales, which cumulative expenses are set forth herein.

- a. Liquidator's, Sales Contractors and Auctioneer's Commissions as set forth more fully herein.
- b. Liquidator's and Auctioneer's expenses as set forth more fully herein.
- c. Trustee's Expenses of Sale as set forth more fully herein.
- d. A commission to the Trustee calculated as follows: Trustee will receive a commission as calculated below: 4% of the first \$1,000,000.00 of Gross Sales Proceeds on which secured creditors have a lien; plus 3% of Gross Sales Proceeds in excess of \$1,000,000.00 on which secured creditors have a lien. This percentage may be larger if enough funds are generated to pay the secured claims in full. In any case, the Trustee's compensation will not exceed the limits set forth in 11 U.S.C. §326(a). This amount will be held by the Trustee pending further order of the Court.
- e. A percentage of the gross proceeds of sale for creditors, other than secured creditors of the estate, which will be equal to the Trustee's compensation as stated in subsection (d) above. This amount will be held by the Trustee pending further order of the Court.
- f. An Administrative Rent claim to Southland Furniture Galleries for the lease at Kepley's Fine Furniture, Little River store. The administrative rent claim will be from the date of conversion, August 28, 2001, until the property is vacated by the Trustee.
- g. An Administrative Rent Claim to Southeastern Investors Associates, LP for the lease at Magnolia Mall store. The administrative rent claim will be from the date of conversion, August 28, 2001, until the property is vacated by the Trustee.
- h. An Administrative Rent claim to The Beach Company for the lease on the Mt. Pleasant store. The administrative rent claim will be from the date of conversion, August 28, 2001, until the property is vacated by the Trustee.
- i. Trustee's administrative cost to include, but not limited to all costs associated with the Court's Order Authorizing the Operation of the Debtor's Business by the Trustee, costs of all Notices to the creditors and/or parties in interest, insurance for protection of the assets, employees and customers, utilities at all sale locations, wages and taxes for employees and professionals hired by the Trustee pursuant to the Court's Order Authorizing the Operation of the Debtor's Business, costs of waste removal, liquidation sale bank card fees of approximately 1.5% of gross sales, some additional freight costs, taxes incurred during the Chapter 7 proceeding, including applicable sales taxes and real and personal property taxes, and Trustee's attorney's fees and costs and accountant's fees, which fees and costs of Trustee's attorney and accountant to be held in escrow by the Trustee pending further Court Order.

- j. All tax liens defined in 11 U.S.C. §724(b) of the United States Bankruptcy Code, including real and personal property taxes, if allowed, which may be due now or after the closing on the sale will be treated as secured tax claims pursuant to 11 U.S.C. §724(b) and will be subordinate to all administrative claims. The property subject to this sale will be sold free and clear of said tax liens with the liens to attach to the sale proceeds.

DEBTOR'S EXEMPTION: NONE

SALE PROCEEDS DISBURSEMENT:

- a. HPFL Liquidator's commission, its Independent Sales Contractors commissions, its costs of general labor personnel, its site manager fees, its site manager lodging costs, costs of advertising, its other miscellaneous costs for waste removal, supplies, freight and additional services will be paid by Trustee out of proceeds of sale on each Tuesday after the sale commencement dates, as are more fully set forth in the Bankruptcy Liquidation Sale and Consulting Agreement with HPFL.
- b. HPFL will be reimbursed from proceeds of sale for advertising costs immediately upon invoice to Trustee.
- c. OAC will deduct its commission and expenses from the gross auction sale proceeds prior to the delivery of the net auction proceeds to the Trustee after the auction.
- d. Trustee's expenses associated with bank card fees, sales taxes as applicable, freight and waste removal will be paid as invoiced.
- e. Trustee's commission, the funds for creditors other than secured creditors, Trustee's attorney's fees and costs and accountants fees and costs will be held in Trustee's escrow account pending further Court approval.

PROCEEDS ESTIMATED TO BE RETAINED BY ESTATE: To be determined


Applicant is informed and believes that it would be in the best interest of the estate to sell said property by liquidation sale and public auction. Applicant also believes that the funds to be recovered for the estate from the sale of said property justify its sale and the filing of this Application.

Any party objecting to the trustee's sale must do so in writing, and in accordance with SC LBR 9014-1. All objections should be filed with the Clerk of Court, United States Bankruptcy Court, 1100 Laurel Street, Post Office Box 1448, Columbia, South Carolina, 29202, with a copy served on the Trustee, debtor in possession, as applicable, at the address shown below. A copy of the objection should also be served on the United States Trustee, AT&T Building, 1201 Main Street, Suite 2440, Columbia, South Carolina, 29201. **All objections must be filed and served within Ten (10) days of the date of this Notice shown below. If any objections are filed, a hearing will be held on October 15, 2001 at 9:00 a.m.**

The Court may consider additional offers at the hearing held on an objection to the sale. The Court may order at this hearing that the property be sold to another party on equivalent or more favorable terms. The trustee or debtor in possession, as applicable, may seek sanctions or other similar relief against any party filing a spurious objection to this notice.

WHEREFORE, Applicant requests the Court to issue an Order Authorizing Sale of Assets Free and Clear of Liens and such other and further relief as may be proper.

Columbia, South Carolina  
Sept 27, 2001.

  
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(803) 765-2935